

PENRITH CITY COUNCIL

MAJOR ASSESSMENT REPORT

Application number:	DA18/0890
Proposed development:	Demolition of Existing Structures & Construction of Six (6) Storey Residential Flat Building including 20 Apartments & Two (2) Levels of Basement Car Parking
Property address:	38 Rodley Avenue, PENRITH NSW 2750 36 Rodley Avenue, PENRITH NSW 2750
Property description:	Lot 59 DP 33490 Lot 58 DP 33490
Date received:	5 September 2018
Assessing officer	Gemma Bennett
Zoning:	Zone R4 High Density Residential - LEP 2010
Class of building:	Class 2 , Class 7a
Recommendations:	Refuse

Executive Summary

Council is in receipt of a development application from Morson Group Pty Ltd, proposing the demolition of existing structures and construction of a six (6) storey residential flat building containing twenty (20) apartments and two (2) levels of basement car parking at 36-38 Rodley Avenue, Penrith.

The subject site is zoned R4 High Density Residential under Penrith Local Environmental Plan 2010 (LEP 2010). Development for the purposes of a residential flat building is permissible with consent in the zone.

The Minister for Planning has given directions under Section 9.1 of the Environmental Planning and Assessment Act 1979 on the development applications that are to be determined on behalf of Council by a Local Planning Panel. These directions, dated 23 February 2018, outline development within the Penrith Local Government Area that is for a residential flat building under the provisions of State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development require determination by a Local Planning Panel.

The proposed development was advertised in the local newspaper and notified to the owners and occupiers of adjoining and nearby properties. The public exhibition period for the proposal was from between the 13 September 2018 and 5 October 2018. During this period, two (2) submissions were received.

Key issues identified for the proposed development include:

- Non compliance with maximum height requirements.
- Non compliance with ADG requirements, including building separations.
- Servicing of the site in relation to stormwater and waste.
- Impacts on visual privacy and solar access to adjacent developments.

An assessment under Section 4.15 of the EP&A Act 1979 (as amended) has been undertaken and, on balance, the application is recommended for refusal.

Site & Surrounds

The subject site is known as 38 - 38 Rodley Avenue, Penrith and is legally known as Lots 58 and 59 of DP 33490. The allotment is rectangular in shape with a frontage onto Rodley Avenue of 30.5m and a depth of 36.6m resulting in an overall site area of 1,112.8m². Each lot is currently provided with a single storey residential dwelling and associated structures. The subject site is relatively flat and there is a drainage easement registered on the western boundary of Lot 58, DP 33490. This easement connects to a drainage easement located on the adjacent site to the south, Penrith Paceway (No. 127-141 Station Street, Penrith), which is a large parcel of land that runs from Mulgoa Road on the west to Station Street to the east.

Rodley Avenue and surrounds is currently in a state of transition from traditional detached dwellings to higher density development (reflecting its current R4 High Density Zoning) with a number of approvals recently granted for the construction of residential flat buildings. In this regard, to the west of the subject site (No. 50-54 Rodley Avenue) is a 6 storey residential flat building containing 42 apartments with basement car parking (approved under DA16/0262) currently under construction. To the north west of the subject site (No. 12 Vista Street, Penrith) are two 6 storey residential flat buildings containing 79 apartments and basement car parking (approved under DA17/0311) currently under construction.

Proposal

The development proposes the demolition of existing structures and construction of a six storey residential flat building containing 20 apartments and two levels of basement car parking. Specifically, the proposed development includes the following key aspects;

Lower Basement

- The provision of a total of 21 residential car parking spaces including 2 accessible spaces and 1 stacked space,
- 16 residential storage spaces,
- Ramp access for vehicles to upper basement, and
- One lift, and one set of fire stairs.

Upper Basement

- The provision of a total of 15 car parking spaces including 1 accessible space, 4 visitor spaces and 1 washing/service space,
- Bicycle parking containing 6 spaces,
- 4 residential storage spaces,
- Waste bin storage room,
- Ramp access for vehicles to ground level, and
- One lift and one set of fire stairs.

Ground Floor Level

- Vehicular access to the basement level from Rodley Avenue,
- Waste bin room and bulky waste storage,
- Provision of 1 x 3 bedroom unit and 2 x 2 bedroom units, each with a separate private open space terrace area,
- Foyer entry area and circulation core providing for lift and waste chutes,
- Pump room, stairs to basement levels and stairs to upper floors.

Level 1

- The provision of 2 x 3 bedroom units and 2 x 2 bedroom units each with an associated balcony, and
- Lobby area with circulation core providing for lift, fire stairs, waste chutes, and service cupboard.

Level 2-3

- The provision of 2 x 3 bedroom units and 2 x 2 bedroom units each with an associated balcony, and

- Lobby area with circulation core providing for lift, fire stairs, waste chutes and service cupboard.

Level 4

- The provision of 2 x 3 bedroom units and 2 x 2 bedroom units each with an associated balcony, and
- Lobby area with circulation core providing for lift, fire stairs, waste chutes and service cupboard.

Level 5

- The provision of 1 x 4 bedroom unit with associated balconies,
- Lobby area with circulation core providing for lift, fire stairs, waste chutes and service cupboard, and
- The provision of a communal open space area (totalling 168.3m² in size) with planter walls, tables and chairs.

The proposed apartment mix is provided by the following table below;

Unit Type	No of units
1 bedroom unit	0
2 bedroom unit	10
3 bedroom unit	9
4 bedroom unit	1

Background

The application was subject to a pre-lodgement meeting held with relevant Council staff members on the 8 May 2018. In addition, the application has been subject to an Urban Design Review Panel Meeting (UDRP) held with Council on the 9 May 2018. A preliminary assessment was conducted on the application with a subsequent additional information letter provided to the applicant on 9 January 2019. In response to this correspondence, additional plans and documentation were provided in February and March 2019, which form the basis of this assessment report.

Plans that apply

- Local Environmental Plan 2010 (Amendment 4)
- Development Control Plan 2014
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy No 55—Remediation of Land
- State Environmental Planning Policy No 65—Design Quality of Residential Flat Development
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

Planning Assessment

Section 4.15 - Evaluation

The development has been assessed in accordance with the matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979, and having regard to those matters, the following issues have been identified for further consideration:

Section 79C(1)(a)(i) The provisions of any environmental planning instrument

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

This Policy ensures the implementation of the BASIX scheme that encourages sustainable residential development. It requires certain kinds of residential development to be accompanied by a list of commitments to be carried out by applicants.

This application is subject to these requirements as it involves BASIX affected development.

BASIX Certificate No. 952452M dated 16 August 2018 was originally submitted with the Development Application demonstrating compliance with set sustainability targets for water and energy efficiency and thermal comfort. It is noted that an amended BASIX certificate has not accompanied the revised set of plans provided for Council's consideration.

Should the application be approved, any development consent would include a condition requesting an updated BASIX certificate to ensure the commitments in the original certificate are maintained during the life of the proposed development.

State Environmental Planning Policy No 55—Remediation of Land

Clause 7 of State Environmental Planning Policy No. 55 (SEPP 55) outlines the following requirements that a consent authority must consider prior to the issue of a consent for any development:

A consent authority must not consent to the carrying out of any development on land unless:

- (a) it has considered whether the land is contaminated, and*
- (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
- (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

There is no record that the subject site is contaminated. The proponent has outlined that the site has been historically used for residential purposes while the surrounding area is also used for residential purposes. In this regard, given the residential use of the subject site and surrounding properties, it is not considered that further analysis is required as the proposal is not a change of land use being residential to residential. While so, should any 'unexpected findings' occur during excavation and earthworks, work is to cease immediately and Penrith City Council is to be notified. This may be addressed by way of recommended conditions of consent should the application be approved.

State Environmental Planning Policy No 65—Design Quality of Residential Flat Development

An assessment has been undertaken of the development proposal against the aims and objectives and specific provisions of State Environmental Planning Policy No. 65—Design Quality of Residential Apartment Development. In particular, the development proposal has been assessed against Clause 30 of the Policy which states that:

"Development consent must not be granted if, in the opinion of the consent authority, the development or modification does not demonstrate that adequate regard has been given to the design quality principles, and the objectives specified in the Apartment Design Guide for the relevant design criteria"

Clause 50 (1A)(1AB) of the Environmental Planning and Assessment Regulation 2000 specifies:

50(1A) If a development application that relates to residential apartment development is made on or after the commencement of the Environmental Planning and Assessment Amendment (Residential Apartment Development) Regulation 2015, the application must be accompanied by a statement by a qualified designer.

50 (1AB) The statement by the qualified designer must:

- (a) verify that he or she designed, or directed the design, of the development, and*
- (b) provide an explanation that verifies how the development:*
 - (i) addresses how the design quality principles are achieved, and*

(ii) demonstrates, in terms of the Apartment Design Guide, how the objectives in Parts 3 and 4 of that guide have been achieved.

It is noted that the development application was not submitted with a design verification statement.

An assessment against Schedule 1 'Design Quality Principles', of the Policy has been undertaken and is included in **Table 1** and an assessment against the accompanying Apartment Design Guide is also provided in **Table 2** below.

Table 1: Assessment Against Schedule 1 - Design Quality Principles		Discussion
Principle 1: Context and neighbourhood character	<p>Good design responds and contributes to its context.</p> <p>Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.</p> <p>Responding to context involves identifying the desirable elements of an area's existing or future character.</p> <p>Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood.</p> <p>Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.</p>	<p>The design is not considered to respond to the context of the site in that the development as proposed does not have regard to required building separation distances as required under the Apartment Design Guide. The neighbourhood character is undergoing change with the R4 high Density zoning allowing for lots to achieve higher yields than what has been traditionally a low to medium density suburban environment. Notwithstanding future intensification of uses in the vicinity, by providing non-compliant separation distances, the proposed development is considered to have little regard for it's current context amongst existing 1 and 2 storey dwellings as well as maintaining consistent and compliant setbacks for any future residential flat buildings in accordance with the Apartment Design Guide.</p> <p>Due to non-compliant building separations, the landscaped area and treatment is considered to be insufficient to balance the built form and is inconsistent with the character of landscaping in the neighbourhood.</p>
Principle 2: Built form and scale	<p>Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.</p> <p>Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements.</p> <p>Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook</p>	<p>The bulk and scale of the proposal is not considered likely to be representative of the desired future character of the neighbourhood noting the non compliant building separations provided.</p> <p>The visual presentation of the built form is considered an acceptable addition to a streetscape which is currently in transition from older low scale residential dwellings to larger residential flat buildings. It uses traditional colours and materials in it's design.</p>

<p>Principle 3: Density</p>	<p>Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.</p> <p>Appropriate densities are consistent with the area's existing or projected population.</p> <p>Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.</p>	<p>The development is considered to provide for generally acceptable internal and external amenity for residents. However the development provides inadequate communal open space, bedrooms adjoining communal open space, and an undesirable waste infrastructure location adjoining the main entry, which is considered to have adverse impacts on residential amenity.</p>
<p>Principle 4: Sustainability</p>	<p>Good design combines positive environmental, social and economic outcomes.</p> <p>Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs.</p> <p>Other elements include recycling and reuse of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation.</p>	<p>The application is not considered to adequately identify that solar access is provided in accordance with the Apartment Design Guide rates.</p>

<p>Principle 5: Landscape</p>	<p>Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity.</p> <p>A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.</p> <p>Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks.</p> <p>Good landscape design optimises useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity and provides for practical establishment and long term management.</p>	<p>Deep soil has been co-located with private open space areas for ground floor apartments, however the proposed communal open space is located on the rooftop, and therefore separated from the deep soil areas.</p> <p>Landscaping proposed is not consistent with the landscape character of the streetscape in that the landscaping provided within the front setback is minimal. Opportunities for landscaping in the form of front setback planting are limited by the presence of the servicing which are prominently located in the building frontage.</p> <p>Landscaping on the western boundary is proposed as a combination of small shrubs and medium sized trees within the easement, and planter boxes with larger trees on the private terrace areas. Planting and any structures (such as stairs and fencing) within the easement are not supported by Council, and this limitation will result in minimal planting to the side boundary to assist in providing privacy screening.</p> <p>Landscaping to the communal roof area is considered to offer areas of relief for future residents using this area.</p>
<p>Principle 6: Amenity</p>	<p>Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being.</p> <p>Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas and ease of access for all age groups and degrees of mobility.</p>	<p>The proposal is considered to provide for an appropriate level of amenity for the majority of future occupants in accordance with the requirements of the Apartment Design Guide in regard to room dimensions and privacy.</p> <p>However, solar access is not considered to have been adequately addressed. The amenity of Unit 51 in relation to acoustic privacy is considered to be adversely impacted by its location adjacent to the communal open space.</p>

Principle 7: Safety	<p>Good design optimises safety and security within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.</p> <p>A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.</p>	<p>The application is considered to have appropriate regard to the principles of Crime Prevention through Environmental Design. The proposal will present to Rodley Avenue with casual surveillance achieved via the location of balconies and windows to all elevations.</p> <p>The building design is not considered to create areas of concealment with clear lines provided in separating public and private areas. The lobby is within view of the entry however the lift is not, which is not considered an appropriate design solution to be further discussed within the ADG section of this report.</p>
Principle 8: Housing Diversity and Social Interaction	<p>Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.</p> <p>Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix.</p> <p>Good design involves practical and flexible features, including different types of communal spaces for a broad range of people and providing opportunities for social interaction among residents.</p>	The mix of units in the development is acceptable.
Principle 9: Aesthetics	<p>Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.</p> <p>The visual appearance of a well designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.</p>	<p>The development is assessed to be appropriate in bulk and scale.</p> <p>As detailed elsewhere in this table and in the assessment of the development against the Apartment Design Guide (ADG) below, the development is considered to be generally consistent with the design criteria and design guidance statements of the ADG, however, non-compliances in relation to building separation distances, communal open space, location of waste storage rooms and service requirements, solar access, and landscaping have been identified.</p>

Part 3	Required	Discussion	Complies
3A-1	Each element in the Site Analysis Checklist should be assessed.	A Site Analysis plan was included in the original package of documents and a modified ADG compliance table included on the amended plans to identify applicable elements as required within the Checklist.	Yes.

3B-1	Buildings to address street frontages.	The building frontage onto Rodley Ave is naturally orientated to north and allows for direct access from the street.	Yes.
3B-2	Living areas, Private Open Space (POS) and Communal Open Space (COS) to received compliant levels of solar access.	Refer discussion under Part 3D and 4A.	N/A.
	Solar access to living rooms, balconies and private spaces of neighbours should be considered.	The submitted shadow diagrams have identified that the adjoining properties to the east and west of the subject site will be impacted by additional overshadowing.	No.
	If the proposal will significantly reduce the solar access of neighbours, building separation should be increased.	As discussed above, inadequate information has been submitted with the development application to enable an accurate assessment in this regard. It is also noted that the proposed building has been orientated at 90 degrees to the boundary with neighbouring properties to minimise overshadowing created. However it is considered likely that the solar access of the south facing private open space of the adjacent neighbour at 34b Rodley Avenue will be further reduced by the development which is considered a consequence of not maintaining compliant setback requirements.	No.
3C-1	Terraces, balconies and courtyard apartments should have direct street entry, where appropriate.	It appears that Unit 01 has direct access to Rodley Avenue via the terrace. However the stairs from the terrace to the ground level are located within the stormwater easement and would need to be relocated to the northern side of the terrace should the application be approved. No structures (stairs, fencing) are to be located within the easement.	Yes.
	Changes in level between private terraces, front gardens and dwelling entries above the street level provide surveillance and improve visual privacy for ground level dwellings.	Limited level difference (up to 200mm) is provided between the pavement height and the finished floor height of the ground floor apartments fronting Rodley Avenue.	Yes.
	Upper level balconies and windows to overlook the street.	All apartments along the street frontage overlook Rodley Avenue.	Yes.
	Length of solid walls should be limited along street frontages.	The presentation of the northern elevation fronting Rodley Avenue is provided with acceptable openings.	Yes.
	Opportunity for concealment to be minimised.	While the front entry is separate and allows linear sight lines into the main lobby area, the lift is not located in sight of the front entry door but in the circulation space.	No.

	<p>Opportunities should be provided for casual interaction between residents and the public domain.</p> <p>Design solutions may include seating at building entries, near letter boxes and in private courtyards adjacent to streets.</p>	<p>No seat is provided near the building entry or on other levels. Letterboxes are located inside the main entry doors however no seating is available in this location.</p>	No.
3C-2	<p>Mail boxes should be located in lobbies, perpendicular to the street alignment or integrated into front fences where individual street entries are provided.</p>	<p>The mail box location is nominated on plans inside the main entry doors and perpendicular to the front boundary which is considered an appropriate design solution.</p>	Yes.
	<p>Substations, pump rooms, garbage storage areas and other service requirements should be located in basement carparks or out of view.</p>	<p>Waste storage rooms are integrated into the building, however it's location to the front elevation adjacent to the main building entry and in clear view from the street is not considered appropriate and considered to create negative streetscape and visual impact.</p> <p>A location for an electrical substation has been identified within the front setback on the north western corner of the subject site. The hydrant booster is nominated on north eastern corner of the front boundary. Both locations are in prominent positions in the site frontage.</p>	No.
3D-1	<p>Communal Open Space (COS) to have minimum area of 25% of site.</p>	<p>278.5m² of COS is required under the ADG (25% of total site area). Submitted plans state that 168.3m² of the site is provided as COS, which equates to 15%. The area of COS is provided to the roof top level on the southern elevation.</p> <p>The proposed COS area is assessed to provide a moderate level of amenity and usable space for residents, with landscape plans indicating seating and BBQ facilities provided.</p> <p>Equitable access to this area provided from all levels via a lift core.</p>	No.
	<p>Achieve a minimum of 50% direct sunlight to the principle usable part of the communal open space.</p>	<p>The communal open space is proposed to the roof area, and shadow diagrams demonstrate that while some solar access is achieved, it is unclear whether the minimum 50% sunlight for 2 hours is maintained to the principal usable areas as the COS is continually overshadowed by Unit 51.</p>	No
	<p>COS to be consolidated into a well-designed, usable area.</p>	<p>Refer to discussion above.</p>	No.

	COS to be co-located with deep soil.	As the communal open space is located to the roof level, co-existence with deep soil area is not provided for.	No.
3D-2	COS is to be provided with facilities such as barbeque areas and seating.	Seating and barbeque areas are provided within the COS area.	Yes.
	COS is to be well lit and readily visible from habitable rooms.	The location of the communal open space to the roof level does not provide for visibility from habitable rooms, but while so, and separate to concerns raised in relation to it's overall size and overshadowing, this area is not considered to provide for any areas of entrapment, is allowed equitable access via the proposed lift service with the location on the roof considered to allow for a greater area of use as compared to a confined location along a side boundary or a rear corner of the subject site.	No, but acceptable in this instance.
3D-4	Boundaries should be clearly defined between public open space and private areas.	<p>Boundaries between public and private space are clear noting the use of planter boxes on the front elevation of the building to the boundaries of the Unit 01 terrace.</p> <p>It is considered that fencing has been mostly provided between private open space areas on the ground floor and areas accessible from Rodley Avenue to minimise inappropriate movement of persons. As fencing cannot be located within the stormwater easement on the western elevation, the fence to the private open spaces of Unit 01 and 02 cannot meet the property boundary. As the Unit 01 stairs need to be similarly relocated, an alterative fencing design would need to be pursued, such as providing the fence on the terrace areas while maintaining access to the ground level. This could be provided as a condition of consent should the application be approved.</p>	Yes.

3E-1	Deep soil is to be provided at a rate 7% with a minimum dimension of 3m.	<p>77.9m² of deep soil is required under the ADG (7% of total site area).</p> <p>Submitted plans state that 390.1m² of the site is provided as deep soil. A review of the deep soil provided reveals that much of the space does not meet the minimum 3m depth required by the ADG. However the deep soil within the 5m strip on the eastern boundary of the site equals approximately 142m² and therefore the deep soil provided is compliant with the ADG.</p>	Yes.
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3F-1	<p>Minimum required shared separation distances between habitable rooms and balconies are to be as follows:</p> <p>1-4 Storeys – 6m 5-8 storeys – 9m</p>	<p>Building separation is as follows (measured from the face of the balcony/building to the side boundary):</p> <p><u>North Separation</u> It is noted that the frontage onto Rodley Avenue provides additional separation to adjoining properties.</p> <p>Ground: 4.4m to terrace, 6.5m to window Levels 1-4: 4.45m Level 5: 7m</p> <p><u>South Separation</u> It is noted that the subject site directly adjoins the trotting track to the rear but while so, the proposal is provided with non-compliant separations to all levels.</p> <p>Ground: 1.6m to terrace, 3m to window Levels 1-4: 3m Level 5: 3m to rooftop communal open space</p> <p><u>Western Separation</u> The proposal is provided with non-compliant separation distances to all levels.</p> <p>Ground: 2.36m to terrace, 5m to window Levels 1-4: 5m Level 5: 6m</p> <p><u>East Separation</u> The proposal is provided with non-compliant separation distances to all levels.</p> <p>Ground: 5m to terrace, 6m to window Levels 1-4: 5m Level 5: 6m</p>	<p>Yes.</p> <p>No.</p> <p>No.</p> <p>No.</p>
3F-2	<p>Communal open space, common areas and access paths to be separated from private open space and windows to apartments.</p>	<p>The proposal is provided with landscaping and fencing to allow for appropriate separation between private and communal open space on the ground level on level 5, Unit 51 is provided with no windows to the communal open space. While so, it is considered likely that the location of bedrooms adjoining the communal open space is likely to result in acoustic impacts on the future occupants of Unit 51, discussed in 4H of this report.</p>	<p>Yes.</p>

	Bedrooms, living spaces and other habitable rooms should be separated from gallery access and other open circulation space by the apartment's service areas.	An acceptable separation has been provided between habitable rooms and circulation spaces.	Yes.
	Balconies, and private terraces should be located in front of living rooms to increase internal privacy.	Balconies are generally provided adjacent to living rooms.	Yes.
	Windows should be offset from the windows of adjacent buildings.	An offset is provided between proposed windows and openings on adjoining properties, particularly in consideration of likely redevelopment of sites to the east and west of the site. Notwithstanding, the reduced separation distances are considered likely to result in negative impacts on visual privacy.	Yes.
3G-1	Building entries to be clearly identifiable.	The entryway is adequately articulated and defined by planter boxes, with direct connection to the pedestrian access from the frontage.	Yes.
3G-2	Building access ways and lift lobbies to be clearly visible from the public domain and communal spaces.	The main building entry is visible from the street. The lift is located within the lobby but is not visible from the front door.	Yes.
3H-1	Carpark access should be integrated with the building's overall façade.	The entry to the basement carpark is adequately integrated into the building with access directly off Rodley Avenue. The location of the driveway limits the ability of the development to provide for a landscaped buffer to minimise the visual impact of the basement entry. Shrub planting is proposed to the eastern boundary and between the driveway and pedestrian entry.	Yes.
	Clear sight lines to be provided for drivers and pedestrians.	Adequate sight lines are provided for pedestrians or drivers exiting the basement.	Yes.
	Garbage collection, loading and servicing areas are screened.	The bulky waste and garbage areas are integrated within the building, however are located at the front of the building directly adjoining the lobby entry.	Yes.
3J-1	The site is not located within 800m of a railway station and is required to comply with the car parking rates as stipulated within the Penrith DCP 2014.	Refer discussion under Penrith DCP 2014.	N/A
3J-2	Secure undercover bicycle parking should be provided for motorbikes and scooters.	6 secure bicycle parking spaces are provided within the basement levels.	Yes.

3J-3	Carpark design and access is safe and secure - A clearly defined and visible lobby area or waiting area should be provided to lifts and stairs.	Lift lobby areas within the basements are clearly defined and appropriately located.	Yes.
4A-1	Living rooms and private open spaces of at least 70% of apartments to receive 2 hours direct sunlight between 9am and 3pm mid-winter.	Submitted plans indicate that 17 of the 20 proposed units achieve adequate solar access (85%). While so, it is considered that insufficient solar analysis has accompanied the application to adequately demonstrate compliance in this regard, particularly in relation to the south facing units.	No.
	A maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at mid winter.	Submitted plans do not indicate the proportion on units that do not achieve any direct sunlight. It is considered that inadequate solar analyses have been provided. However, based on the orientation of the lot it is considered likely that all units will receive at least some solar access between 9am and 3pm.	Yes.
4A-2	Courtyards, skylights and high level windows (with sills of 1,500mm or greater) are used only as a secondary light source in habitable rooms.	The application is not provided with any highlight windows, courtyards or skylights.	N/A
4A-3	Sun shading devices are to be utilised.	Shading devices are provided to the north, east and west facing units and on the rooftop communal open space.	Yes.
4B-3	60% of apartments are naturally ventilated and overall depth of cross-through apartments 18m maximum glass-to-glass line.	The submitted plans indicate that 100% of apartments can achieve natural cross ventilation.	Yes.
4C-1	Finished floor to finished ceiling levels are to be 2.7m for habitable rooms, 2.4m for non-habitable rooms.	The proposal is for 3.1m measured from finished floor to finished floor level resulting in a 2.8m finished floor to underside of ceiling, which is compliant with the ADG.	Yes.
4D-1	Apartments are to have the following min. internal floor areas: 1 bed – 50sqm 2 bed – 70sqm 3 bed – 90sqm Additional bathroom areas increase minimum area by 5sqm.	Apartment sizes comply with the ADG requirements.	Yes.
4D-2	In open plan layouts the maximum habitable room depth is 8m from a window.	All units comply with this requirement.	Yes.
4D-3	Master bedrooms to be 10sqm's and other rooms 9sqm's.	All units comply with this requirement.	Yes.
	Bedrooms to have a minimum dimension of 3m.	All units comply with this requirement.	Yes.
	Living rooms to have minimum width of 3.6m for a 1 bedroom unit and 4m for 2 & 3 bedrooms.	All units comply with this requirement.	Yes.

4E-1	All units to have the following primary balcony areas: 1 bed – 8sqm (2m deep) 2 bed – 10sqm (2m deep) 3 bed – 12sqm (2.4m deep)	All units comply with the balcony size and area requirements.	Yes.
4E-3	Air-conditioning units should be located on roofs, in basements, or fully integrated into the building design.	Individual air conditioning units are provided to units. While the units are screened, the balcony units are considered to provide a poor outcome from a visual amenity perspective.	No.
4F-1	The maximum number of apartments off a circulation core on a single level is eight. Where a development is unable to achieve the design criteria, a higher level of amenity for common lobbies, corridors and apartments should be demonstrated.	The application provides for a maximum of 4 units to levels 1 to 4.	Yes.
4F-1	Daylight and natural ventilation to be provided to all common circulation spaces.	Windows are provided to all circulation spaces to allow for natural light.	Yes.
4F-1	Primary living room or bedroom windows should not open directly onto common circulation spaces, whether open or enclosed. Visual and acoustic privacy from common circulation spaces to any other rooms should be carefully controlled.	All primary bedroom and living room windows do not directly front onto common circulation spaces. In this regard, visual and acoustic privacy is considered to be maintained.	Yes.
4G-1	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is to be provided: 1 bed – 4m ³ 2 bed – 6m ³ 3 bed – 10m ³ With 50% of the above to be provided within the Units.	Submitted plans indicate that storage cages are provided with the basement carpark. Adequate area for internal storage is also accommodated within apartments.	Yes.
4H-1	Noise transfer is minimised through the siting of buildings and building layout.	The amenity of Unit 51 in relation to acoustic privacy is considered to be adversely impacted by the bedrooms located directly adjacent to the communal open space.	No.
4K-1	Flexible apartment configurations are provided to support diverse household types.	The development proposes mostly 2 and 3 bedroom apartments with one 4 bedroom apartment on level 5.	Yes.
4L-1	Direct street access should be provided to ground floor apartments.	Direct street access is provided for ground floor Unit 01 as it faces Rodley Avenue.	Yes.

4M-1	Building facades to be well resolved with an appropriate scale and proportion to the streetscape and human scale.	The proposed street elevation is provides for a varied building elements, with face brock to walls and rendered painted finishes to balconies. The façade is provided with both horizontal and vertical elements with stacked balconies creating clearly identifiable vertical lines while horizontal division is provided via dominant storey levels.	Yes.
4O-1	Landscape design to be sustainable and enhance environmental performance.	<p>The proposed landscaping design will allow for small sized trees and shrubs to be incorporated within planter boxes provided to the rooftop level.</p> <p>The nature of the landscaping proposed is considered to allow for some screening of apartments from adjoining premises in association with boundary fencing while also providing some streetscape planting. As previously discussed the extent of planting in the stormwater easement is unlikely to be supported, and in addition a large tree is proposed to be planted in the area within the front setback designated for OSD storage. Landscaping area available within the front setback is further reduced by the placement of booster, driveway, footpath, substation, easement and OSD system. The proportion of the site covered by the building footprint, terraces and driveways is 69%, leaving limited opportunities for meaningful landscaping to be provided.</p> <p>In this regard, the proposed landscaping is considered to not enhance the environmental performance of the structure.</p>	No.
4Q-2	Adaptable housing is to be provided in accordance with the relevant Council Policy.	A total of 3 adaptable units are proposed. With a total of 20 units identified, to meet Council's Policy in relation to adaptable units 2 units are required. In this regard, the proposal is compliant.	Yes.
4U-1	Adequate natural light is provided to habitable rooms.	Apartment depths and open floor plan arrangements allow light into most kitchens, dining and living areas. However, as detailed previously, inadequate solar analysis has been provided to demonstrate availability of natural light.	No.

4V-2	Water sensitive urban design systems to be designed by suitably qualified professional.	The development application was referred to Council's internal Environmental Waterways Unit. While the WSUD plans generally comply with Council's policy, it was noted that the bioretention basin on the landscape plan did not correspond to the location shown on the stormwater concept plans. It was considered that should development consent be granted, the WSUD proposal could be supported provided amended plans were submitted prior to issue of a Construction Certificate, along with other conditions.	Yes.
4W-1	A Waste Management Plan is to be provided.	<p>The development application was referred to Council's Waste Management Officer. The waste management proposal was not supported.</p> <p>Council's policy (DCP C5 clause 5.2.2.4) requires residential flat buildings of 3 or more storeys to provide on site waste collection, integrated into the building's form. The proposal includes an indented bay with street collection which does not comply with the policy. Further discussion is provided against DCP Section C5 Waste Management.</p>	No.
	Circulation design allows bins to be easily manoeuvred between storage and collection points.	Waste areas and manoeuvring is non-compliant with Council's DCP. Bins are to be manoeuvred from the waste room using the pedestrian entry to the building.	No.

Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

An assessment has been undertaken of the application against relevant criteria with Sydney Regional Environmental Plan No. 20—Hawkesbury-Nepean River (No. 2—1997). This Policy aims *“to protect the environment of the Hawkesbury-Nepean River system by ensuring that the impacts of future land uses are considered in a regional context”*. The Policy requires Council to assess development applications with regard to general and specific considerations, policies and strategies.

The proposal is not found to be contrary to these general and specific aims, planning considerations, planning policies and recommended strategies of the plan. The site is not located within a scenic corridor of local or regional significance and it is considered that the proposed development will not significantly impact on the environment of the Hawkesbury-Nepean River either in a local or regional context.

Local Environmental Plan 2010 (Amendment 4)

Provision	Compliance
Clause 1.2 Aims of the plan	Does not comply - See discussion
Clause 2.3 Permissibility	Complies
Clause 2.3 Zone objectives	Does not comply - See discussion
Clause 2.7 Demolition requires development consent	Complies
Clause 4.1A Minimum lot sizes for dual occupancies, multi dwelling housing and residential flat buildings	Complies
Clause 4.3 Height of buildings	Does not comply - See discussion
Clause 4.4 Floor Space Ratio	N/A
Clause 4.6 Exceptions to development standards	Complies - See discussion
Clause 5.10 Heritage conservation	N/A
Clause 7.1 Earthworks	Complies
Clause 7.2 Flood planning	Does not comply - See discussion
Clause 7.4 Sustainable development	Complies
Clause 7.6 Salinity	Does not comply - See discussion
Clause 7.7 Servicing	Does not comply - See discussion

Clause 1.2 Aims of the plan

The proposal is not considered to comply with the following aims of the LEP:

(b) to promote development that is consistent with the Council's vision for Penrith, namely, one of a sustainable and prosperous region with harmony of urban and rural qualities and with a strong commitment to healthy and safe communities and environmental protection and enhancement

(c) to accommodate and support Penrith's future population growth by providing a diversity of housing types, in areas well located with regard to services, facilities and transport, that meet the current and emerging needs of Penrith's communities and safeguard residential amenity

The adverse amenity impacts on future occupants, in regards to the inadequate communal open space provided and inadequate separation distances for the proposed built form, is considered likely to result in low levels of visual privacy and solar access for future occupants and adjoining residents, and is not aligned with Council's vision for development in Penrith.

Clause 2.3 Zone objectives

The subject site is located within the R4 High Density Residential zone. The objectives of the zone include:

- *To provide for the housing needs of the community within a high density residential environment.*
- *To provide a variety of housing types within a high density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that a high level of residential amenity is achieved and maintained.*
- *To encourage the provision of affordable housing.*
- *To ensure that development reflects the desired future character and dwelling densities of the area.*

The design of the proposed development does not ensure that a high level of residential amenity is achieved and maintained in that the application has not demonstrated that building separation, solar access, communal open space and landscaping standards have been satisfactorily achieved in accordance with the Apartment Design Guide.

Clause 4.3 Height of buildings

The subject site is provided with a maximum building height of 18m under the LEP. The application is provided with a flat roof at RL46.200 and a lift overrun of RL47.200. This provides for a height non compliance on the subject site of between 1.38 and 1.5m (overall height of 19.38m to 19.5m or 7.6% to 8.3% above the maximum height required) to the uppermost habitable floor area (for units 51 on Level 5), with a non-compliance of 2.19m (overall height of 20.19m or 12.2% above the maximum height required) to the lift overrun.

In this regard, the application was accompanied with a '4.6 Exception to development standard' document which has discussed the nature of the height non compliance. Discussion in regard to the non compliance is provided below.

Clause 4.6 Exceptions to development standards

The application is non compliant with the height of buildings development standard as discussed above under Clause 4.3 'Height of Buildings' of the Penrith Local Environmental Plan 2010.

Clause 4.6 of the Penrith Local Environmental Plan 2010 provides that development consent may be granted for development even though the development would contravene a development standard. This is provided that the relevant provisions of the clause are addressed, in particular subclause 3-5 which provide:

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

(4) Development consent must not be granted for development that contravenes a development standard unless:

- (a) the consent authority is satisfied that:*
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) the concurrence of the Secretary has been obtained.*

(5) In deciding whether to grant concurrence, the Secretary must consider:

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) the public benefit of maintaining the development standard, and*
- (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.*

Building Height

The application has been accompanied by a revised Clause 4.6 Variation Request prepared by Stimson & Baker Planning dated March 2019 in relation to the building height non-compliance. The request has provided for the following evaluation with reference to Clause 4.6(3)(a) and (b) and the identified variation in relation to Clause 4.3 of the LEP;

How is strict compliance with the development standard unreasonable or unnecessary in this particular case?

The proposal meets the general intent of clause 4.3 Height of Buildings and complies with the objectives of this development standard and more generally the zone as follows:

- The proposal is compatible with the height, bulk and scale of the emerging and desired future character of the locality and with the surrounding development. This is demonstrated within the submitted plans, showing the breach in height would not create any impacts on nearby or adjoining properties.*

- *The proposal does not impact on the visual amenity, reduces views or minimises loss of privacy or solar access.*
- *There is no heritage item on the site.*
- *The proposal provides a high-quality urban form and provides a building that can contribute to a varying skyline given the recent increase in height limit in this area.*
- *The high-quality form of the proposal has been supported through the Council's own Urban Design Review Panel process.*
- *It is unreasonable to apply the height limit across the site in this case as the proposal does not impact on the visual amenity nor does it reduce views or minimises loss of privacy or solar access. The orientation of the building, the stepping of the building and façade treatment minimises shadow impacts with the majority of the shadow falling on the Paceway site to the south.*
- *The proposed development meets the objectives of the zone and the height of building clause, it contributes to the provision of necessary land uses within the Penrith City in locations in close proximity to services and facilities. Given the spatial context of the building, the proposed encroachment will not present as a perceptible element. It is considered that the proposal is in the public interest and strict compliance with the standard in this instance is both unreasonable and unnecessary.*

Are there sufficient environmental planning grounds to justify contravening the development standard?

There are a number of positive environmental planning grounds that arise as a result of this development, and specifically the breach in the height limit, as follows.

- 1. The physical constraints are accommodated on the site whilst still achieving the development outcomes sought under the LEP.*
- 2. High quality design being achieved through the Council Urban Design Review Panel process.*
- 3. The Council has acknowledged the specific development constraints within the locality and has responded by supporting reasonable variations to the height limit in order to support appropriate development within this zone.*

Discussion in regard to building height non-compliance

The commentary provided by the accompanying 4.6 Variation in relation to the non-compliant height is considered to have adequately addressed why compliance with the development standard is unreasonable and unnecessary in this instance.

It is considered that the portion of the building that exceeds the building height standard in itself does not result in additional overshadowing and amenity impacts for neighbouring dwellings. The overshadowing and privacy impacts relate to non compliant separation distances to rear and side boundaries for the proposed building and their current and future relationships specifically to neighbouring properties.

In addition, the site is affected by overland flows and therefore the consequential ground floor level is required to be raised to comply with Council's Policy, which in turn has created an increase in the overall height of the building.

The overall height is considered consistent with the surrounding approvals granted for residential flat buildings currently under construction. The proposal is also provided with appropriate floor to ceiling heights which will not add inappropriate height to the built form.

Noting the above, a departure from the height development standard is therefore considered acceptable in this specific instance. The section of the applicant's written request relating to height non compliance is considered to have provided for sufficient environmental planning grounds to justify contravening the development standard and is not inconsistent with the objectives of Clause 4.3 of the LEP.

Clause 7.2 Flood planning

The subject site is mapped as being affected by overland flows. An existing 6 foot (1.8m) stormwater easement is located on the western boundary of Lot 58, DP 33490. It is also noted that the site is located adjacent to a trapped low point within the roadway, and the proposal is required to adequately demonstrate that overland flows can be conveyed around the development over the proposed easement.

The application proposes to create a new easement on the western boundary of Lot 59, 33490. Part 2.6 of Council's Policy on Stormwater Drainage Specifications for Building Developments indicates that based on the 450mm pipe diameter required to accommodate over flows from the upstream catchment, an easement width of 2.5m is required. Council's Development Engineer has reviewed the proposal and has indicated that a variation on the Policy may be acceptable due to the location of the basement 2.36m from the western boundary and in this instance a minimum width of 2.3m would be required.

The applicant has provided amended stormwater and architectural plans. The stormwater plans indicate a 2.3m easement, however the architectural plans are inconsistent in that a 2m easement is indicated. The architectural and landscaping plans indicate stairs, fencing and planting within the easement, which is not supported by Council.

In addition, as the basement is located 2.36m from the western boundary, the applicant was requested to provide a Geotechnical Report prepared by a suitably qualified person for the basement car parking areas addressing excavation adjacent to Council infrastructure (with reference to *RMS Technical Direction GTD 2012/2001 Excavation adjacent to RMS infrastructure*), ground water movement, salinity and contamination. No geotechnical report has been submitted in this regard.

Clause 7.6 Salinity

The application has not been supported by a geotechnical report prepared by a suitably qualified person for the basement car parking areas addressing excavation adjacent to Council infrastructure (with reference to *RMS Technical Direction GTD 2012/2001 Excavation adjacent to RMS infrastructure*), ground water movement, salinity and contamination. In this regard, the application does not adequately consider the impact of the proposed development on salinity processes.

Clause 7.7 Servicing

Clause 7.7 of the LEP specifies that:

- (1) The objective of this clause is to ensure that development of land to which this Plan applies reflects the availability of services.*
- (2) Before granting development consent for development on any land to which this Plan applies, the consent authority must be satisfied that:*
 - (a) the development will be connected to a reticulated water supply, if required by the consent authority, and*
 - (b) the development will have adequate facilities for the removal and disposal of sewage, and*
 - (c) if the development is for seniors housing, the development can be connected to a reticulated sewerage system, and*
 - (d) the need for public amenities or public services has been or will be met.*

It is considered that the development is non-compliant with Clause 7.7(2)(d) as the need for public services, in terms of the waste infrastructure provided and the capacity to collect waste on the site, have not been demonstrated to meet the standards required for servicing in accordance with Council policy. This is discussed further in relation to DCP Section C5 of this report.

In addition, the stormwater easement has not been designed to meet the requirements of Council policy and therefore sufficient public services for the efficient disposal of stormwater are not available.

Section 79C(1)(a)(ii) The provisions of any draft environmental planning instrument

Draft Environment State Environmental Planning Policy

The Draft Environment SEPP was exhibited from 31 October 2017 to 31 January 2018. This consolidated SEPP proposes to simplify the planning rules for a number of water catchments, waterways, urban bushland, and Willandra Lakes World Heritage Property.

Changes proposed include consolidating a total of seven existing SEPPs being:

- *State Environmental Planning Policy No. 19 – Bushland in Urban Areas*
- *State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011*
- *State Environmental Planning Policy No. 50 – Canal Estate Development*
- *Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment*
- *Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River (No.2-1997)*
- *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*
- *Willandra Lakes Regional Environmental Plan No. 1 – World Heritage Property.*

It is noted that the proposed changes to State Environmental Planning Policy No 19 – Bushland in Urban Areas (SEPP 19) are not considered to impact the proposed development. In addition, the amendments to Sydney Regional Environmental Plan No 20 – Hawkesbury – Nepean River (No. 2 – 1997) do not impact the proposed development. In this regard, the proposal is not inconsistent with the provisions of this Draft Instrument.

Draft Remediation of Land SEPP

The Department of Planning and Environment has announced a Draft Remediation of Land SEPP, which will repeal and replace the current State Environmental Planning Policy No 55—Remediation of Land.

The proposed new land remediation SEPP will:

- provide a state-wide planning framework for the remediation of land,
- maintain the objectives and reinforce those aspects of the existing framework that have worked well,
- require planning authorities to consider the potential for land to be contaminated when determining development applications and rezoning land,
- clearly list the remediation works that require development consent, and
- introduce certification and operational requirements for remediation works that can be undertaken without development consent.

It is also proposed that it will transfer the requirements to consider contamination when rezoning land to a direction under Section 9.1 of the Environmental Planning and Assessment Act 1979.

Whilst the proposed SEPP will retain the key operational framework of SEPP 55, it will adopt a more modern approach to the management of contaminated land. Noting the above, the Draft SEPP will not alter or affect the findings in respect to contamination of the site.

Section 79C(1)(a)(iii) The provisions of any development control plan

Development Control Plan 2014

Provision	Compliance
DCP Principles	Does not comply - see Appendix - Development Control Plan Compliance
C1 Site Planning and Design Principles	Does not comply - see Appendix - Development Control Plan Compliance
C2 Vegetation Management	Complies
C3 Water Management	Does not comply - see Appendix - Development Control Plan Compliance
C4 Land Management	Complies
C5 Waste Management	Does not comply - see Appendix - Development Control Plan Compliance
C6 Landscape Design	Does not comply - see Appendix - Development Control Plan Compliance
C7 Culture and Heritage	N/A
C8 Public Domain	N/A
C9 Advertising and Signage	N/A
C10 Transport, Access and Parking	Does not comply - see Appendix - Development Control Plan Compliance
C11 Subdivision	N/A
C12 Noise and Vibration	Complies
C13 Infrastructure and Services	Does not comply - see Appendix - Development Control Plan Compliance
D2.1 Single Dwellings	N/A
D2.2. Dual Occupancies	N/A
D2.3 Secondary Dwellings	N/A
D2.4 Multi Dwelling Housing	N/A
D2.5 Residential Flat Buildings	Does not comply - see Appendix - Development Control Plan Compliance
D2.6 Non Residential Developments	N/A

Section 79C(1)(a)(iiia) The provisions of any planning agreement

There are no planning agreements applying to this application.

Section 79C(1)(a)(iv) The provisions of the regulations

The relevant prescribed conditions of the Regulations, such as the requirement for compliance with the Building Code of Australia and fire safety requirements, could be imposed as conditions of consent where applicable. Subject to the recommended conditions of consent, the proposed development complies with the requirements of the *Environmental Planning and Assessment Regulation 2000*.

As previously indicated, Clause 50 (1A)(1AB) of the Environmental Planning and Assessment Regulation 2000 specifies:

50(1A) If a development application that relates to residential apartment development is made on or after the commencement of the Environmental Planning and Assessment Amendment (Residential Apartment Development) Regulation 2015, the application must be accompanied by a statement by a qualified designer.

The development application as amended was not submitted with a design verification statement.

Section 79C(1)(b)The likely impacts of the development

Context and Landscaping

It is noted that the subject site and its surrounds are currently in a state of transition from a previously lower density zone to its current high density zoning, with a number of land parcels either in Rodley Avenue or in the vicinity currently subject to or have been granted approval for the construction of residential flat buildings. This is evident in the provision of a new residential flat building to the west of the subject site at 50-54 Rodley Avenue and further construction works to the north of the subject site also providing for multi level apartment buildings. In this regard, the proposal is considered in keeping with the desired future character of the area allowing for an upgrade in structures from existing detached dwelling houses to large compact residential flat buildings.

Notwithstanding the future character of the vicinity, the application is considered to inadequately cater for maintenance of amenity for existing adjoining neighbours, currently in the form of 1 and 2 storey single dwellings and dual occupancies. The proposal is provided with non-compliant side and rear setbacks in accordance with the ADG and the DCP. Greater setbacks (albeit still non compliant with the requirements of the ADG) are provided for the Level 5 only, which does not significantly reduce the visual impact of the building when viewed from both adjoining properties and surrounding public areas. The overbearing visual impact created by the development when viewed from the adjacent properties to the east and west, combined with adverse impacts to visual privacy and overshadowing of private open space, results in a development that has is considered to have insufficiently considered the context of the site.

The 6m front building setback to the ground floor fronting Rodley Avenue is considered to be consistent with immediately adjacent properties, however the landscaping provided within the front setback area, in the form of shrubs and one small tree, combined with the location of multiple utility services within this area, is not considered to minimise the visual impact of the building and allow for an improved integration with the existing streetscape.

Solar Access

It is considered that insufficient solar analyses have been provided with the application to demonstrate compliance with solar access requirements under the ADG and DCP. In particular, the private open space of 34b Rodley Avenue adjoining the subject site to the east appears likely to be unacceptably impacted by the additional overshadowing created by the proposal.

Overlooking

The reduced building separations provided by the application are considered likely to result in unacceptable impacts on visual privacy to either side of the subject site, with particular regard to the private open space of 34b Rodley Avenue and the elevated terrace areas to Unit 03.

Access, Traffic and Parking

The proposal will generate an increase in traffic volume, but while so, it is considered that the application has adequately demonstrated that the local road network has capacity to cater for the development. Off-

street parking spaces are provided in accordance with the DCP requirements. A double width 6.6m driveway is proposed from Rodley Avenue, however this reduces to 3m wide ramp for one way traffic only. It is acknowledged that a signal system is proposed, however the 3m wide ramps allow for one-way traffic, while the proposal is to use the ramps for two direction traffic. These basements do not provide ease of parking for visitors, and it is considered likely that they will choose to park on the street.

Waste Management

The application was supported by a Waste Management Plan which has detailed the way in which all waste and materials resulting from the excavation, construction and on-going use of the building on the site are to be dealt with.

The application has indicated the provision of street collection by Council waste contractors with waste collection/storage rooms and a bulky goods area incorporated into the ground floor plan, accessed by the main pedestrian pathway to the lobby. An indented bay is proposed to the street to facilitate collection of waste bins. Both Council's Waste Management Officer and Traffic Engineer have indicated that they do not support the proposed street collection.

Section 79C(1)(c)The suitability of the site for the development

The site is considered to be unsuitable for the proposed development as the proposal does not respond to the constraints and the size of the site in accommodating a development of the scale proposed. This is evidenced by the non-compliant building separations, limited landscaped area provided by the proposal, intrusion of structures into an identified easement, as well as the inability to adequately service the site with on-site waste removal as required by Council's Policy.

Section 79C(1)(d) Any Submissions

Community Consultation

The development application was advertised in the local newspaper and notified to owners and occupiers of adjoining and nearby properties pursuant to the recommendations of the Regulations and in accordance with Council's Development Control Plan. Affected property owners and occupiers were notified in the surrounding area and invited to make a submission on the proposal during the exhibition period from 13 September 2018 and 5 October 2018. During this period, two (2) submissions were received.

The concerns raised in these submissions are discussed below.

Summary of issues raised in submissions

Issue	Comment
1. Non-compliance with intent of planning legislation to ensure the wellbeing, privacy, safety, security and comfort of existing residents is maintained	The application has been assessed against the relevant planning legislation and on balance is not considered to meet key objectives and standards contained within those Acts and Policies, as discussed in this report.
2. Unacceptable noise impact from the number of air conditioning units placed on balconies.	Balcony air conditioner units are not viewed as an acceptable design solution due to visual impacts and potential cumulative noise impacts. Centralised air conditioning systems were recommended in UDRP advice for the proposal dated 16 May 2018.
3. Rodley Avenue is a quiet, narrow street with existing on street parking problems. The number of new developments in the street will exacerbate that problem.	Council's Traffic Engineer has reviewed the application and has indicated that the design of the single width basement parking ramps is not supported by Council. Additionally, the indented bay proposed to accommodate waste collection vehicles will impact on the number of available street parking spaces and is not supported by Council.

4. Overshadowing of adjoining properties will result in dampness, health issues, additional electricity costs and inefficient solar panel operation.	The reduced rear and side setbacks of the proposed development in combination with the orientation of the private open space at the adjacent dual occupancy development to the east at 34a and 34b Rodley Avenue is likely to result in overshadowing of the private open space, such that the minimum solar access requirement of 3 hours of sunlight to 40% of the private open space between 9am and 3pm on 21 June (DCP section D2 clause 2.5.9) is not achieved.
5. Visual impact of the development from the adjoining properties, particularly in relation to the 3m rear setback.	The proposed development provides reduced rear and side setbacks and in the context of single and two storey development adjoining the site, the proposal is considered to present overbearing visual impacts when viewed from adjacent properties.
6. Negative impact on privacy, particularly in relation to overlooking from the balconies and rooftop garden of the development into the private open space of adjoining properties.	The proposed development provides reduced rear and side setbacks, which when combined with the elevation of balcony areas is considered to adversely impact on the visual and acoustic privacy of adjoining private open space at 34a and 34b Rodley Avenue.
7. The development does not allow for enough open space between boundaries and the construction and is oversized in relation to the site.	The ADG non-compliant building separation distances on all elevations and limited landscaping provided by the development have been discussed previously in this report and is not considered acceptable.
8. The development does not meet the objectives of the height of building standard.	This is discussed in relation to the Clause 4.6 variation request for the proposed building height which is considered supportable in this instance.
9. The development will have a negative economic impact on the value of neighbouring properties.	The proposed development is considered likely to inhibit future development opportunities for development on adjacent sites, in that the ability of those sites to develop in accordance with the development controls is likely to be restricted by the subject proposal.
10. Concerns about proper precautionary measures with regard to asbestos and demolition of the existing dwellings, and subsidence damage caused as a result of excavations for the development.	Should the application be approved, these aspects can be appropriately managed through conditions of consent related to asbestos demolition and disposal and underpinning of adjacent development.
11. Overdevelopment of Penrith generally and lack of commensurate infrastructure to manage issues caused by development in the area.	The development is located within an R4 High Density Residential zone, and as such is permissible with consent. Strategic planning and housing targets for the local government area are broader issues and not able to be resolved within the context of a single development application.

Referrals

The application was referred to the following stakeholders and their comments have formed part of the assessment:

Referral Body	Comments Received
Building Surveyor	No objections - subject to conditions
Development Engineer	Not supported
Environmental - Environmental management	No objections - subject to conditions
Environmental - Waterways	No objections - subject to conditions
Waste Services	Not supported
Traffic Engineer	Not supported
Community Safety Officer	No objections - subject to conditions

Section 79C(1)(e)The public interest

The public interest is best served by the orderly and economic use of land for purposes permissible under the relevant planning regime and in accordance with the prevailing planning controls. In this regard, the proposed works are inconsistent with the relevant planning provisions related to the development of residential flat buildings and on balance, it is considered that the application is unsupportable primarily in relation to the impacts on the inadequate building separation provided, inability to service the site with regards to waste, lack of landscaped area provided, adverse impacts on residential amenity for future occupants of the proposed development and issues raised in submissions in relation to the development.

Section 94 - Developer Contributions Plans

Development contributions apply to the subject proposal, however as the application is recommended for refusal, a condition of consent requiring their payment prior to the issue of a Construction Certificate is not recommended.

Conclusion

The proposed development has been assessed in accordance with the relevant provisions of the environmental planning instruments and Development Control Plan pertaining to the land. The provision of a residential flat building is a permissible use under the site's R4 High Density Residential zoning. As the development application is for a residential flat building under the provisions of State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development, the application is provided for determination to the Penrith Local Planning Panel.

Noting the commentary contained within this report, the proposed development has been assessed against the relevant heads of consideration contained in Section 4.15 of the *Environmental Planning and Assessment Act, 1979* and on balance, has been found to be unsatisfactory. The site is unsuitable for the proposed development and the proposal in its current form is not considered to be in the public interest. The proposal is therefore recommended for refusal.

Recommendation

1. That DA18/0890 providing for the demolition of existing structures and construction of a six (6) storey residential flat building containing twenty (20) apartments and two (2) levels of basement car parking be refused subject to the attached conditions.
2. That those persons who made submissions in relation to the proposal are notified of the determination.

Refusal

1 X Special (BLANK)

The application fails to satisfy the development standard for building height and the request for a variation to the development standard is not supported because the proposed development will not be in the public interest as it will not ensure a high level of a residential amenity, provide a high quality urban form or reflect the desired future character of the area, being the objectives of the zone and height standard.

2 X Special 02 (Refusal under Section 79C(1)(a)(i) of EPA Act 1979)

The application is not satisfactory for the purpose of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as the proposal is inconsistent with the provisions of Penrith Local Environmental Plan 2010 as follows:

(i) Clause 1.2 Aims of the Plan The proposal is inconsistent with the aims of the Plan in relation to promotion of development consistent with Council's vision for Penrith, to meet the emerging needs of Penrith's communities while safeguarding residential amenity and ensuring that the development incorporates the principles of sustainable development.

(ii) Clause 2.3 Zone Objectives The proposal is inconsistent with the objectives of the R4 High Density Residential zone, particularly (d) The design of the proposed development does not ensure that a high level of residential amenity is achieved and maintained, and (f) to ensure that development reflects the desired future character and dwelling density of the area.

(iii) Clause 7.2 The proposal does not comply with Council's Policy in relation to overland flow management on the site.

(iv) Clause 7.6 The proposal has not provided sufficient information to assess the impact of the development on salinity.

(v) Clause 7.7 The proposal does not meet the requirements for waste and stormwater servicing.

3 X Special 03 (Refusal under Section 79C(1)(a)(i) of EPA Act 1979)

The application is not satisfactory for the purpose of Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as the proposal is inconsistent with the provisions of State Environmental Planning Policy No 65 - Design Quality of Residential Flat Development and the accompanying Apartment Design Guide as follows:

(i) Clause 30(2)(a) - compliance with the design quality principles specified in the Apartment Design Guide:

- Principle 1: Context and Neighbourhood Character
- Principle 2: Built form and scale
- Principle 3: Density
- Principle 4: Sustainability
- Principle 5: Landscape
- Principle 6: Amenity

(ii) Clause 30(2)(b) - compliance with the objectives specified in the Apartment Design Guide:

- 3B Orientation
- 3C Public domain interface
- 3D Communal and public open space
- 3F Visual privacy
- 4A Solar and Daylight Access
- 4E Private open space and balconies
- 4H Acoustic privacy
- 4O Landscape design
- 4U Energy efficiency
- 4W Waste management

4 X Special 04 (Refusal under Section 79C(1)(a)(iii) of EPA Act 1979)

The development application is not satisfactory for the purpose of Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, as the proposal is inconsistent with the following provisions of Penrith Development Control Plan 2014:

(i) The application has not satisfied Council with respect to the requirements under Part B - 'DCP Principles', specifically:

- The proposal has not been designed with consideration for the health, recreational and social needs of residents, and the proposal does not minimise its ecological footprint or promote sustainable production and consumption.

(ii) The application has not satisfied Council with respect to the requirements under Section C1 'Site Planning and Design Principles', specifically:

- The built form and scale of the proposal does not adequately respond to the context of the site.

(iii) The application has not satisfied Council with respect to the requirements under Section C5 'Waste Management', specifically:

- The proposal provides for street collection and waste bin storage rooms on the ground floor.

(iv) The application has not satisfied Council with respect to the requirements under Section C6 'Landscape Design', specifically:

- The proposal does not include landscaping to the site that responds to the context of the site, or complements the built form or minimises the impacts of the scale of the development.

(v) The application has not satisfied Council with respect to the requirements under Section C10 'Transport, Access and Parking', specifically:

- The indented bay for waste collection is not supported.

(vi) The application has not satisfied Council with respect to the requirements under Section C13 'Infrastructure and Services', specifically:

- The proposal does not meet the requirements for engineering works in relation to the stormwater easement.

(vii) The application has not satisfied Council with respect to the requirements under Section D2 'Residential Development', specifically:

- Clause D2.5.5 The landscaped area does not meet the minimum 35% required for the site. The landscaping provided is compromised by servicing requirements.

- Clause D2.5.8 The proposal does not achieve a high level of visual or acoustic privacy for future occupants or adjoining neighbours.

- Clause D2.5.9 The proposal results in overshadowing of the private open space of adjoining development.

5 X Special 06 (Refusal under Section 79C(1)(a)(iv) of EPA Act 1979)

The application is not satisfactory for the purpose of Section 4.15(1)(a)(iv) of the *Environmental Planning and Assessment Act 1979* as the proposal was not accompanied by all of the information as required under Schedule 1 Forms of the Regulations or as required to properly consider the proposal, as follows:

- Clause 50 (1A)(1AB) of the *Environmental Planning and Assessment Regulation 2000* requires a statement from a qualified designer to be submitted.

- An updated BASIX Certificate.

- A Geotechnical Report.

6 **X Special 07 (Refusal under Section 79C(1)(b) of EPA Act 1979)**

The development application is not satisfactory for the purpose of Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979* in terms of the likely impacts of that development including those related to:

- (i) Streetscape and character,
- (ii) Context and landscaping,
- (iii) Bulk and scale,
- (iv) Solar access and privacy impacts,
- (v) Amenity, safety and security impacts related to the ground floor layout,
- (vi) Communal open space,
- (vii) Access, traffic and parking,
- (viii) Energy efficiency,
- (ix) Waste management impacts.

7 **X Special 08 (Refusal under Section 79C(1)(c) of EPA Act 1979)**

The application is not satisfactory for the purpose of Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979* as the site is not suitable for the scale of the proposed development.

8 **X Special 9 (Refusal under Section 79C(1)(d) of EPA Act 1979)**

Based on the above deficiencies and submissions received, approval of the proposed development would not be in the public interest pursuant to Section 4.15(1)(d) of the *Environmental Planning and Assessment Act 1979*.

Appendix - Development Control Plan Compliance

Development Control Plan 2014

Part B - DCP Principles

The proposal is contrary to the principles, commitments and objectives of the DCP, specifically as follows:

Principle 2: Achieve long term economic and social security

The building has not been designed with the health, recreational and leisure needs of future occupants in mind as the size of the communal open space is inadequate to meet the needs of residents. Limited opportunity for social interaction are provided by the development.

Principle 4: Enable communities to minimise their ecological footprint.

The proposed development does not provide for adequate waste infrastructure, and as only 30% of the site is available for landscaping insufficient planting is able to be provided.

Part C - City-wide Controls

C1 Site Planning and Design Principles

Clause C1.2.3 provides for the following considerations with regards to building form, including the height, bulk and scale of a development:

- a) Context: An applicant must demonstrate how all proposed buildings are consistent with the height, bulk and scale of adjacent buildings and buildings of a similar type and use.*
- d) Overshadowing: Building locations, height and setbacks should seek to minimise any additional overshadowing of adjacent buildings and/or public spaces where there would be a significant reduction in amenity for users of those buildings/spaces.*
- e) Setbacks/Separations: Buildings should be sufficiently set back from property boundaries and other buildings to:*
 - i) Maintain consistency with the street context and streetscape character, especially street/front setbacks;*
 - ii) Maximise visual and acoustic privacy, especially for sensitive land uses;*
 - iii) Maximise deep root planting areas that will support landscape and significant tree plantings integrated with the built form, enhancing the streetscape character and reducing a building's visual impact and scale;*
 - iv) Maximise permeable surface areas for stormwater management; and*
 - v) Minimise overshadowing.*

The proposed development has not appropriately considered the context of the infill site in relation to the adverse overlooking, visual impact and overshadowing created in relation to adjoining 1 and 2 storey properties. Side and rear building setbacks and separations are demonstrated to be non compliant with the ADG and DCP controls. Landscaping does not enhance the streetscape character or reduce the building's visual impact and scale, due to limitations created by the service infrastructure and easement on the western boundary. In this regard, it is considered that the development is non compliant with Section C1 of the DCP.

C5 Waste Management

The proposal includes waste bin storage and bulky waste rooms on the ground floor, with additional bin storage within the upper basement level. Street collection is proposed utilising an indented bay on the Rodley Street frontage. A waste chute system is incorporated into the design.

Council's Waste Management Officer has reviewed the proposal and does not support the on site collection for the following reasons:

- DCP clause C5.2.1 (3) and C5.2.2.4 (1) require waste bin storage areas to be located in the basement of residential flat buildings. The proposal includes part basement, part

ground floor waste bin storage which provides a poor presentation to the front façade of the development.

- DCP clause C5.2.2.4 (5) requires on site collection to service the development. The proposal provides street collection, with no capacity for collection vehicles to enter the site. C5.2.2.4 (7) and (9) state provide for the following:

(7) Where on-site collection is not possible because of topographic or access constraints, and/or restrictive site dimensions, adequate arrangements need to be made for the convenient, safe and direct access between the waste storage room and the collection point. These arrangements need to be discussed at a pre-lodgement meeting with Council.

(9) Council will consider alternate and innovative waste management systems for high density developments which deliver sound town planning and environmental outcomes for the development and broader community. The applicant is encouraged to discuss the innovate solutions with Council's Waste Management Team and during Council's Pre-DA service.

This is further outlined within Section 2.5 of Council's Residential Flat Building Guideline, as follows:

2.5.1 Alternative Solutions

To apply for alternative solutions on restricted sites the following will need to be addressed and submitted:

- *The onus is on the applicant to demonstrate that:*
 - *An improved planning and waste operational outcome is achieved for the site; and*
 - *Site characteristics restrict or limit the development accommodating waste collection vehicles entering and exiting in a forward direction*

The standards within the waste guidelines and Section C5 of the DCP were adopted by Council on 27 June 2016 and commenced operation on 7 July 2016. All new development applications are subject to these standards. Council reviewed the policy in order to provide an improved collection service and facilitate consistent planning controls for developments.

There is precedent in Rodley Avenue for street collection of waste bins (DA16/0262 at 50-54 Rodley Avenue) however as this application was lodged on 16 March 2016, previous waste collection standards were applied which allowed greater consideration of street collection for residential flat buildings. It is also noted that the development at 50-54 Rodley Avenue consolidated 3 lots, resulting in a wider available frontage for the indented bay, while also pursuing an agreement with the adjoining property owner facilitating part use of their property frontage for the indented bay. This mitigated the impact of the indented bay on the local road.

In this regard, while it is acknowledged that the width of the site limits capacity to collect waste on the site, it is considered that the subject application has not adequately demonstrated that an improved planning outcome is achieved by locating the waste infrastructure to the front elevation of the building, directly adjoining and accessed by a shared pathway to the main lobby. The indented bay, which requires a minimum length of 20m, takes up the entire road frontage of the subject site. This limits opportunity for street tree planting and removes street car parking spaces. The indented bay proposed is not supported by Council's Traffic Engineer, which is further discussed below. It is noted that this advice was provided to the applicant at the pre-lodgement meeting on 8 May 2018 with the application subsequently maintaining these concerns.

C6 Landscape Design

The relevant objectives of Section C6 of the DCP are as follows:

- a) To promote landscape design and planning as part of a fully integrated approach to site development;*
- b) To ensure landscape design takes into account the site's context, landscape and visual character, existing landscape features and amenity, both at the local and regional scale;*

- c) To encourage the development of quality landscape design associated with new development that is consistent with industry best-practice;
- e) To ensure landscape design adequately complements the proposed built form and minimises the impacts of scale, mass and bulk of the development in its context;
- f) To encourage landscape design that can be effectively maintained to a high standard for the life of that development

The front setback of the proposed development is dominated by servicing infrastructure (booster, substation, driveway, easement, OSD system) which effectively limits landscaping opportunities presented to the streetscape. The reduced rear setback and limitation of the western side setback to accommodate the stormwater drainage easement, prevents effective screen planting on those elevations in order to promote privacy. The shrubs and small-medium sized trees provided do not assist in ameliorating the impact of the bulk and scale of the built form and or provide adequate green buffers to the development.

The landscaping proposed is inconsistent with objectives a, b, c, e and f as listed above.

C10 Transport, Access and Parking

The following on-site car parking rate is required to be provided in relation to the proposed residential flat building development;

Land Use Element	Parking Rate	Required
Residential Flat Buildings	1 space per 1 or 2 bedrooms	10
	2 spaces per 3 or more bedrooms	20
	1 space per 40 units for service vehicles	1
	Visitor parking: 1 space per 5 dwellings	4
	1 space for car washing for every 50 units	1
Total Required		36 spaces

It is noted that the application is compliant with the required car parking rate, via the provision of a total of 36 parking spaces over two basement levels. These parking spaces have also included a designated car wash bay, service vehicle bay and three accessible car parking spaces associated with the provision of adaptable apartments. In this regard, it is considered that adequate parking facilities are provided to cater for future occupants and visitors of the proposed apartments.

However, the application was referred to Council's Traffic Engineering Section who raised objections to the application in with the following comments made:

A double width 6.6m driveway is proposed from Rodley Ave, however this reduces to 3m wide ramp for one way traffic only. This is not supported. It is acknowledged that a signal system is proposed (details provided within the traffic report). 3m wide ramps provide for one-way traffic, however, the ramps propose two direction traffic. These basements do not provide ease of parking for visitors, and they will choose to park on the street.

On-site access for waste collection vehicles is not provided. The indented on-street bay is not supported by Traffic Section. In addition, alteration of unrestricted on-street car parking to restricted parking (eg NP Waste Vehicles exempt) within 1km of Penrith Station requires approval of Transport for NSW via RMS.

The application must consider the ability of the waste collection vehicle to turn around at the western end of Rodley Ave where only eastbound traffic from Mulgoa Rd is available. A waste

collection vehicle cannot park east facing in an indented bay at this location as this is contrary to the Australian Road Rules.

Noting the comments provided, the proposed ramp to the basement level and indented on street waste collection bay are not considered acceptable design solutions for the proposal.

C13 Infrastructure and Services

The stormwater easement as proposed does not comply with Clause C13.4 in that it requires all engineering works to be undertaken in accordance with the provisions of Council's Policy on Stormwater Drainage for Building Developments. This has been discussed in relation to LEP clause 7.4.

D2 Residential Development

The proposal has been assessed against the applicable provisions of this section and is found to be generally acceptable. Particular clauses which have provided for non compliances or relevant discussion points are identified below:

Clause D2.5.5 Landscaped Area

Clause D2.5.5 Landscaped Area of the DCP provides the following development control in relation to landscaped area for a R4 High Density Residential in which the subject site is located;

Zone: R4 High Density Residential

Minimum Landscaped area % of the site: 35%

In addition to the above, landscaped areas are to have a minimum width of 2m, with no basement encroachment, may include terraces and patios located no higher than 0.5m above ground and pedestrian pathways to building and dwelling entrances but does not include substantially-paved areas such as buildings, driveways and covered garages. Noting these controls, an assessment of the provided plans has identified that with a site area of 1,112m², a total of 389m² landscaping area is required. While so, only 338m² (30% of the total site area) landscaping area is considered to have been provided with the proposal and is therefore non compliant by 51m².

While it is acknowledged that the proposal has provided for a compliant deep soil zone, building separations to the boundaries as well as communal open space is non-compliant. In combination with the extent of intrusion by servicing in the front setback (booster, substation, driveway, easement, OSD system) limiting landscaping opportunities to the streetscape, it is considered that the proposal has not satisfactorily met the objectives for landscaped area.

Clause D2.5.6 Front and Rear Setbacks

Clause D2.5.6 Front and Rear Setbacks within the DCP provides the following development control in relation to front and rear setbacks:

1) Determine the maximum development footprint for your site:

- a) The minimum rear setback for a single storey building (or any single storey component of a building) is 4m*
- b) The minimum rear setback for a two storey building (or any two storey component of a building) is 6m.*

2) Within the rear boundary setback:

- a) there shall be no building encroachments either above or below ground (eaves excepted);*
- b) maximise the amount of undisturbed soil, encouraging rapid growth of healthy trees and shrubs;*
- c) where there are physical encumbrances such as open drains, increase the setback accordingly.*

3) *Determine an appropriate front setback:*

- a) *either average the setbacks of the immediate neighbours; or*
- b) *5.5m minimum whichever is the greater dimension.*

The proposal includes a rear setback on the ground floor of 3m to the building (bedroom) wall, with an encroachment created by the terraces to Units 02 and 03. Levels 1 to 4 include a rear setback of 3m to the bedroom wall and balconies 4.44m from the rear boundary. Pre-lodgement advice suggested that a reduced rear setback to bedroom walls may be acceptable based on the location of the trotting track to the rear, however that balconies and living areas must maintain the minimum required setbacks. In this regard the proposed development does not comply with the rear setback controls.

The existing front setbacks of the adjoining dwellings is 7.5m (40 Rodley Avenue) and 5.4m (34 Rodley Avenue) which provides an average of 6.4m. The development provides a 6m setback to the front wall of the building which is considered generally consistent with the immediate neighbours.

D2.5.8 Visual and Acoustic Privacy and Outlook

The objectives of clause D2.5.8 are as follows:

- a. *Provide an outlook from dwellings and their private open space, and achieve levels of acoustic and visual privacy that are reasonable for a medium-density residential neighbourhood.*
- b. *To provide a high level of visual and acoustic privacy for residents and neighbours in dwellings and private open space.*
- c. *To ensure that building design minimises overlooking problems.*

The location of the terrace to Unit 02 at RL27.600 and therefore elevated above the ground level on the adjacent property by approximately 600mm, is considered to have the potential to result in adverse privacy impacts through overlooking into the primary private open space of 34b Rodley Avenue.

D2.5.9 Solar Planning

The reduced rear and side setbacks of the proposed development in combination with the orientation of the private open space at the adjacent dual occupancy development to the east at 34a and 34b Rodley Avenue is likely to result in overshadowing of the private open space, such that the minimum solar access requirement of 3 hours of sunlight to 40% of the private open space between 9am and 3pm on 21 June (DCP section D2 clause 2.5.9) is not achieved.

Inadequate solar analyses have been submitted with the application to demonstrate achievement of solar access requirements.